REMARKS

Claims 1-31 are pending in the application.

Claims 1-31 have been rejected.

Claims 1, 3, 10, 13, 14, 15, 19, 22, 24, 29, 30 and 31 have been amended, as set forth herein, solely to correct informalities noted by the Examiner and not for reasons related to patentability.

I. REJECTION UNDER 35 U.S.C. § 112

Claims 1, 3, 10, 13-14, 19, 22, 24 and 30-31 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The rejection is respectfully traversed.

Applicant has amended Claims 1, 3, 10, 13, 14, 15, 19, 22, 24, 29, 30 and 31 solely to correct informalities noted by the Examiner (or noted the Applicant) and not for reasons related to patentability.

Accordingly, the Applicant respectfully requests withdrawal of the § 112 rejection of Claims 1, 3, 10, 13-14, 19, 22, 24 and 30-31.

II. REJECTION UNDER 35 U.S.C. § 103

Claims 1-2, 5, 13-15, 20-22, 24, and 30-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-Szabadi (US Patent Application Publication 2003/0233267). Claims 3-4, 8-9, 12, 16, 18 and 25-28 were rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-Szabadi (US Patent Application Publication 2003/0233267) and in further view of Christianitytoday.com. Claims 6-7, 10, 17 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-SZabadi (US Patent Application Publication 2003/0233267) and in further view of Eliott (US Patent 6,446,053). Claims 11, 19 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-Szabadi (US Patent Application Publication 2003/0233267) in view of Eliott (US Patent 6,446,053) and in further view of Wakelam (US Patent 6,859,768). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP § 2142; In re Fritch, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)*). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP § 2142; In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)*). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. (*MPEP § 2142; In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)*). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. (*In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Grabiak, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985)*).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. (*In re Bell, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993)*). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. (*MPEP § 2142*).

Adams provides a system for financing a stadium facility to be constructed and/or operated by an entity and/or for financing a team to play in such facility. Col. 1, lines 41-44. Adams is directed to the financing for construction/operation of a single facility (such as an athletic stadium). Adams does not discuss or refer to multiple facilities within the stadium facility, nor break down the "facility" into a plurality of facilities, whereby each facility is associated with a construction project. Since Adams operates on a macro level for a single facility, there is no reason or necessity for Adams to identify a plurality of facilities within a complex, with each facility associated with a construction project. As a result, Adams additionally fails to disclose, teach or suggest generating a schedule of the construction projects using a determined revenue and costs, as conceded by the Office Action.

Hertel-Szabadi discloses a project management method in which a "project" may be thought of as "a collection of activities and tasks designed to achieve a specific goal." Hertel-Szabadi, Paragraph 0004. Thus, Hertel-Szabadi appears to describe conventional project management in which a "project" is broken down into "phases." Hertel-Szabadi, Paragraph 0004. Applicant has reviewed the passages of Hertel-Szabadi cited by the Office Action, and Applicant respectfully submits that none of these passages disclose or describe generating a schedule of the construction projects (a construction project for each facility) using the previously determined potential revenue of at least one of the facilities and the determined cost of at least one of the facilities. While Hertel-Szabadi generally describes that timelines have to be scheduled for the project (paragraph 0003), this is not equivalent to generating a schedule of the construction projects (one for each identified facility) using the potential revenue and cost information. In stark contrast, Applicant uses the potential revenue and cost information to generate the schedule for the construction projects. It appears that Hertel-Szabadi plans the structures, costs, revenues, resources and timelines at the same time (and revises them periodically) and the scheduling of the timelines is not based on a previously determined potential revenue stream (from one of the facilities within the complex) and the previously determined cost (of one of the facilities) - as described and claimed by the Applicant.

Therefore, the deficiencies noted in Adams are not cured or supplied by Hertel-Szabadi. Nor is there any motivation to combine these two references. Even if Adams could be properly combined with Hertel-Szabadi (which combination the Applicant respectfully denies is proper) the combination would still not disclose, teach or suggest all elements of independent Claims 1, 15, 22 and 24.

The Applicant respectfully submits that the alleged motivation to combine references presented by the Office Action is insufficient to establish a finding of *prima facie* obviousness. The Applicant respectfully submits that the alleged motivation to combine references is not provided with specificity. The general fact that two references are concerned with a similar general technical area does not, without more, provide the necessary motivation to combine the references. The Applicant respectfully submits that the alleged motivation to combine references has been assumed by "hindsight" in light of the existence of the Applicant's invention.

For these reasons, the proposed combination of Adams and Hertel-Szabadi does not disclose, teach or suggest Applicant's claimed invention, as set forth in independent Claims 1, 15, 22 and 24 (and their dependent claims). Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejection of Claims 1-2, 5, 13-15, 20-22 24, and 30-31.

With respect to the other rejections of certain dependent claims, none of the other references supply the deficiencies that have been previously pointed out in the main proposed combination.

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***wmunck@munckbutrus.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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